

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
Administratrix of the Estate of EVELINE
BARROS-CEPEDA,
Plaintiffs,

v.

THOMAS TAYLOR, Jr., and the CITY
OF BOSTON,
Defendants.

**DEFENDANT CITY OF BOSTON'S EMERGENCY MOTION TO QUASH
PLAINTIFF'S DEPOSITION SUBPOENA TO THE BOSTON POLICE
DEPARTMENT'S KEEPER OF RECORDS**

The Defendant, City of Boston, hereby moves to quash the deposition subpoena served upon the Boston Police Department's Keeper of Records, attached hereto as Exhibit A. As grounds therefore, the Defendant states the following:

1. The Plaintiff has served on the Defendant, City of Boston, a Keeper of Records deposition subpoena to the Boston Police Department with a request that the Defendant produce voluminous, complex and irrelevant documents at a deposition scheduled for Friday, February 1, 2008.
2. The Plaintiff attempts to circumvent the discovery rules by serving a named defendant with a Keeper of Records deposition subpoena that not only violates the discovery rules, but also this Court's strict Orders governing discovery in this case, dated December 20, 2007 and January 29, 2008.
3. The Plaintiff has violated the discovery rules because the proper mechanism for obtaining the voluminous and complex documents sought by the Plaintiff falls under Rule 34. See Carter v. United States, 164 F.R.D. 132 (D. Mass. 1995); see also Canal Barge Company v. Commonwealth Edison Company, 2001 WL 817853 (N.D. Ill. 2001) (recognizing that a document request under Rule 30(b)(5) cannot be a substitute for a Rule 34 request).
4. In this case, the Plaintiff failed to serve her Rule 34 request for production of documents in timely fashion during the extensive discovery period permitted in this case.

5. In fact, as of the date of this Court's December 20, 2007 status conference, the Plaintiff had not noticed any depositions, served any interrogatories on any party or requested any documents beyond those listed in Defendants Rule 26.1 disclosures.
6. In fact, this Court issued a Memorandum and Order, dated today, January 29, 2008, denying Plaintiff's Motion to Compel the Defendants to answer untimely filed written interrogatory requests and requests for production of documents. See Memorandum and Order, dated January 29, 2008, Document No. 71, at 1-2.
7. Additionally, this Court's Memorandum and Order held that "the defendants have correctly interpreted this Court's December 20, 2007 Order as *authorizing only the limited additional discovery explicitly discussed and ordered at the December 19, 2007 status conference.*" See id. at 2 (emphasis added).
8. Accordingly, under this Order, the Plaintiff is not permitted to conduct this Keeper of the Records deposition because at no point during the December 20, 2007 status conference did Plaintiff make any mention of or request any Keeper of Records deposition specifically involving the City of Boston's Police Department. See Exhibit B, Transcript of December 20, 2007 Status Conference.
9. The only keeper of records depositions mentioned by the Plaintiff involved obtaining the records of Officer Michael Paillant, the officer injured during the September 8, 2002 incident. During the conference, the Plaintiff stated that she sought the hospital records, insurance documents and worker's compensation file of Officer Paillant, and concluded her requests by stating, "And I believe that would sum it up." See Exhibit B, at 20-21. Notably, Schedule A of the Plaintiff's Keeper of Records Deposition Subpoena does not request the documents discussed by the Plaintiff during the status conference. See Exhibit A.
10. As additional grounds for the Defendant's Motion to Quash, the Defendant notes that the Plaintiff's request fails to comply with the governing rules. Here, the Plaintiff served the Defendant with a Keeper of Records Subpoena on January 22, 2008 for a deposition scheduled for February 1, 2008, less than the 30 days required under the Rules, which in pertinent part state:

[t]he notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 should apply to the request.

Fed. R. Civ. P. 30(b)(5). Here, Rule 34's procedure has not been followed.

11. Given the Plaintiff's violation of the discovery rules and this Court's discovery Orders,

the Defendant requests that its Motion to Quash be allowed.

Respectfully submitted,
DEFENDANT CITY OF BOSTON,

By its attorneys:

/s/ Helen G. Litsas

Helen G. Litsas #644848
Special Assistant Corporation Counsel
Hollett Building
38 Main Street
Saugus, MA 01906
(781) 231-8090

Evan C. Ouellette, BBO # 655934
Assistant Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201
(617) 635-4048

CERTIFICATE OF SERVICE

I, Helen G. Litsas, hereby certify that on this date I served a copy of the foregoing documents upon lead plaintiff's counsel, Andrew Stockwell-Alpert, by electronic filing and by postage prepaid, first class, U.S. Mail.

1/29/08 /s/ Helen G. Litsas

Date Helen G. Litsas

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to L.R. D. Mass. 7.1(A)(2), I hereby certify that I communicated with Plaintiff's Attorney, Andrew Stockwell-Alpert, regarding *Defendant City of Boston's Motion to Quash the Keeper of Records Deposition of the Boston Police Department* and we were unable to narrow the issues.

1/29/08 /s/ Helen G. Litsas

Date Helen G. Litsas

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHENIA DANCY-STEWART as Administratrix
of the Estate of EVELINE BARROS-CEPEDA,
Plaintiff

v.

THOMAS TAYLOR, Jr., and the
CITY OF BOSTON
Defendants

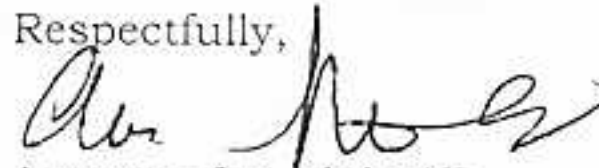
Civil Action
No.0511803MLW

To: Evan Ouelette, Esq.
City of Boston Law Dept.
City Hall - Rom 615
Boston, MA

Please take notice that at ten o'clock AM on Friday, February 1, 008, at the law offices of Andrew Stockwell-Alpert, 11 Beacon Street, Suite 1210, Boston, Massachusetts the plaintiff by his attorney will take the deposition upon oral examination of the Keeper of the Records for the Boston Police Department pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before an officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully,



Attorney for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2008, I served the above notice on the defendant in the above-entitled action by fax and mailing a copy, postage prepaid, to his counsel of record.



SCHEDULE A

1. Any and all documents that comprise or are part of your personnel file of the defendant, Thomas Taylor, including the disciplinary records, and any other documents in the possession of the defendant that concern his hiring, training, duties, performance, assignments, and mental and physical condition.
2. Any and all documents concerning or at all relevant to any formal or informal complaint made against or about the defendant Thomas Taylor from any source and concerning any subject matter. This includes, but is not limited to:
 - a. documents concerning all complaints and other disciplinary or police review of activities by the Internal Affairs Bureau;
 - b. the complete documents concerning each incident listed on the disciplinary record for defendant Roe.
 - c. the complete documents concerning all complaints and other disciplinary or internal police review of activities maintained by the Boston Police Department concerning defendant Taylor and
 - d. All information contained in the computers maintained by the Internal Affairs Bureau of the Boston Police Department or any other division of the Metropolis Police Department concerning the complaints made against the defendant Roe, including but not limited to the information which is retrievable by computer codes.
3. For the period January 1, 1997 to the current date all police guidelines, directives, policy statements, procedures, and training materials, in any form and of any type, concerning police policy, custom or practice regarding:
 - a. discipline of officers generally;
 - b. specific discipline for the violation of constitutional rights;
 - c. the procedure for the use of deadly force to stop moving vehicles
4. The complete file with all documents in their original, unedited, unabridged, unredacted condition of the internal investigation by the Boston Police Department of the following police shooting incidents:

Michael Clougherty
Kingsley Boyd
Eugene Thibau
Ricky Bolden
Carlos Garcia
Jose Pineda

Rene Junior Romain
La Veta Jackson
Nelson Santiago
William Murray
Israel Vasquez-Robles
Bert Bowen

Justin Ronchetti
Luis Gonzalez
Evelyn Barros-Cepeda

Victoria Snelgrove
Stanley Seney

5. The complete file with all documents in their original, unedited, unabridged, unredacted condition of every other internal investigation by the Boston Police Department of police shooting incidents from 1997 to date.
6. The complete record of Thomas Taylor's performance at the Moon Island firing range.

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
 DISTRICT OF COLUMBIA

SHENIA DANCY-STEWART as Administratrix of the
 Estate of Eveline Barros-Cepeda
 V.

SUBPOENA IN A CIVIL CASE

THOMAS TAYLOR, Jr. and the CITY OF BOSTON

Case Number:¹ 05-11803-MLW

TO: KEEPER OF RECORDS
 Boston Police Department
 One Schroeder Plaza, Boston, MA 02120-2014

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Law Offices of Andrew Stockwell-Alpert
 11 Beacon St., Suite 1210, Boston, MA 02108

DATE AND TIME
 2/1/2008 2:00 pm

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see scheduling attached herewith.

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE, 1/18/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Andrew Stockwell-Alpert, Esq.
 11 Beacon Street, Suite 1210, Boston, MA 02108. Telephone No. (617)720-4244

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number

AQ88 (Rev. 12/07) Subpoena in a Civil Case (Page 2)

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply.

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information.

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:05-cv-11803-MLW

4
5 SHENIA DANCY-STEWART, et al,
6 Plaintiffs

7 vs.

8
9 THOMAS TAYLOR, JR., et al,
10 Defendants

11
12 *****

13
14 For Hearing Before:
15 Chief Judge Mark L. Wolf

16 Lobby Conference

17
18 United States District Court
19 District of Massachusetts (Boston)
20 One Courthouse Way
21 Boston, Massachusetts 02210
22 December 19, 2007

23 *****

24 REPORTER: RICHARD H. ROMANOW, RPR
25 Official Court Reporter
United States District Court
One Courthouse Way, Room 5200, Boston, MA 02210
(617) 737-0370

A P P E A R A N C E S

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and

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and

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ADELIO DeMIRANDA, ESQ.

For the Administratrix and individual plaintiffs

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and

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(617) 635-4048
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For Defendants

1 P R O C E E D I N G S

2 (Lobby, 1:00 p.m.)

3 THE COURT: All right. Why don't you tell me
4 or remind me who you are and who you represent.

5 MR. STOCKWELL-ALPERT: Good afternoon. I'm
6 attorney Andrew Stockwell-Alpert and I represent Shenja
7 Dancy-Stewart who is the plaintiff administrator of the
8 estate.

9 MR. McCAULL: Your Honor, James McCaull. Same
10 as Mr. Alpert. My name is not on the complaint. I
11 don't think I filed an appearance yet, but I will. I
12 shall.

13 MR. DeMIRANDA: Adelio DeMiranda, your Honor,
14 and I represent Shenja Dancy-Stewart.

15 THE COURT: How do you spell your last name?

16 MR. DeMIRANDA: D-E-M-I-R-A-N-D-A.

17 THE COURT: Okay.

18 MR. KEEFE: The same of William Keefe, for the
19 record, for the plaintiff, and along with Mr. Stockwell-
20 Alpert. I have my appearance in.

21 MS. LITSAS: Good afternoon, your Honor. I'm
22 Helen Litsas. I represent the two defendants in this
23 action, the City of Boston and Thomas Taylor.

24 MR. OUELLETTE: Evan Ouellette, and my last
25 name is spelled O-U-E-L-L-E-T-T-E, and I also represent

1 the two defendants, the City of Boston and Thomas
2 Taylor.

3 THE COURT: All right. Well, you've got a lot
4 of lawyers, but you haven't made the progress you told
5 me you were going to make when we had the scheduling
6 conference in August of 2006. And despite the fact the
7 plaintiffs have got four lawyers, you didn't file the
8 report that was due on December 14th. So -- from based
9 on what I read, I don't understand why I would extend
10 the schedule nine months and maybe I shouldn't extend it
11 at all, because it looks like some of these depositions
12 you had trouble getting weren't noticed until November
13 and you find out the deponent's in jail.

14 But what's going on? You know, cases are hard and
15 sometimes things happen, but you've got to work
16 diligently at them. And, you know, with six lawyers
17 representing three parties, this should be doable.

18 MR. STOCKWELL-ALPERT: I guess I should speak
19 first, because I'm probably the only one you've had any
20 consistent contact with and I was the one who came in
21 for the scheduling conference.

22 There have been a lot of -- I can say a lot of
23 things, but nothing is really an excuse or a
24 justification. Um, there has been an awful lot of --

25 We need to start out with the fact that we're not

1 really all six representing the same entity, there are
2 three of us representing one of the beneficiaries and
3 two representing the other, but you can't represent
4 beneficiaries. There are all six representing the
5 estate. And the reason that's an issue is --

6 THE COURT: You mean the four of you. They
7 represent the defendants.

8 MR. STOCKWELL-ALPERT: Oh, I'm sorry. That's
9 right. There are two others who aren't here.

10 THE COURT: Oh, there are two others who
11 aren't here?

12 MR. STOCKWELL-ALPERT: Right.

13 THE COURT: Where are they?

14 MR. STOCKWELL-ALPERT: Well, Manuel Pires, his
15 mother died suddenly last Friday after a six-month bout
16 with pancreatic cancer and so he's been taking the week
17 off and the funeral is tomorrow and so he's kind of
18 preoccupied right now.

19 And that's one of the things that has been a
20 problem with me, by the way, is that as I told you way
21 back when, that I'm legally blind, and so when I do a
22 lot of this discovery, I obviously rely on people around
23 me to help me with the reading and sorting things out
24 and doing some of the leg-work. The communication all
25 around has been somewhat complicated by two factors.

1 There's kind of -- and this is utterly irrelevant
2 to you from the standpoint of moving the case, but
3 there's kind of a split in the beneficiaries with regard
4 to what they consider to be the value of each of their
5 cases and how they're going to be best represented. And
6 so as a result, although we came in originally on one --
7 you know, representing a particular individual, Carlos
8 Cepeda, who was the other beneficiary, he saw fit to
9 basically retain other counsel and these two individuals
10 represent him. So --

11 THE COURT: Well, there's only one named
12 plaintiff, I think.

13 MR. STOCKWELL-ALPERT: Right. Exactly.
14 There's one plaintiff. The plaintiff is the
15 administrator who obviously has to bring the case on
16 behalf of the estate. But there's two different
17 beneficiaries who are having problems coordinating what
18 they think the lawyers are going to do and therefore
19 he's going to basically bring somebody else in. You're
20 not going to hear from six lawyers at the trial. That's
21 clearly not going to happen.

22 THE COURT: Of course I'm not. There's only
23 one plaintiff.

24 MR. STOCKWELL-ALPERT: Well, things have
25 gotten extremely complicated and I can just cut to the

1 chase and tell the Court that all that's gone on so far,
2 and obviously this is little or no excuse as far as the
3 Court is concerned, but what I can tell you is --

4 THE COURT: But let me ask you this, what have
5 you done since August of 2006? Whose deposition have
6 you taken? You haven't designated the experts. Are you
7 going to have experts? Usually you do. Have you taken
8 any depositions?

9 MS. LITSAS: Well, your Honor, the defendant
10 has noticed all of the depositions thus far, but the
11 plaintiffs have not noticed yet one deposition. We have
12 noticed depositions maybe on 15 or 16 different
13 occasions. Several of our deponents have failed to
14 appear on numerous occasions.

15 THE COURT: Well, why didn't you ask the
16 Magistrate Judge to give you an order compelling them to
17 appear, if you want their deposition?

18 MS. LITSAS: Well, the problem has been that a
19 couple of the witnesses that are involved -- that that
20 isn't our intention. We have had some difficulty in
21 locating them because some of the witnesses are part of
22 a transient population.

23 Brima Wurie, we noticed him previously prior to
24 the one he filed a motion to regarding his deposition
25 while he's been incarcerated. The problem was that we

1 didn't know he was incarcerated at the time and so there
2 was a long delay. We started noticing depositions over
3 a year ago. The problem has been that we've discovered
4 that one of the deponents was unfortunately deceased.
5 Another problem has been difficulty in coordinating
6 dates with plaintiffs' counsel because, from what I
7 understood, there was some complications involving who
8 was representing who, um, what was going on --

9 THE COURT: Well, there's only -- I mean, I
10 understand the beneficiaries -- how do the beneficiaries
11 have standing to participate in the depositions?
12 There's one plaintiff, Ms. Dancy-Stewart. The
13 beneficiaries can have lawyers, but how do they get to
14 ask questions?

15 MR. STOCKWELL-ALPERT: We don't except there's
16 cross-examination. We can't object but --

17 THE COURT: No, they don't have any standing
18 to participate in the case. They can't ask questions.
19 They can't -- they can testify. Am I missing
20 something?

21 MR. KEEFE: No, your Honor, not at all.

22 THE COURT: So what you have to do -- I'm
23 sorry. Go ahead.

24 MR. KEEFE: I think, to be fair to both sides,
25 that we dragged our feet unnecessarily. You know, we

1 have maybe eight, nine witnesses who we're intending to
2 notice forthwith --

3 MR. STOCKWELL-ALPERT: We need three months.

4 THE COURT: You need three months. But you
5 have to do it.

6 MR. STOCKWELL-ALPERT: Three months.

7 THE COURT: I mean, I don't want to throw your
8 case out because you've --

9 MR. STOCKWELL-ALPERT: We've talked about this
10 between us and --

11 THE COURT: Let me finish. I'm trying to
12 agree with you. See, I have a Northeastern law student
13 and I want to teach her that when you're about to win,
14 that's when you stop talking.

15 (Laughter.)

16 THE COURT: Is three months enough?

17 MS. LITSAS: Well, your Honor, it depends on
18 -- I've just been informed today, for the first time,
19 that the plaintiffs intend to take now eight
20 depositions. You know, we have noticed several
21 depositions. What he would like is to finish those
22 depositions that have been previously noticed and then
23 the plaintiffs can schedule theirs. On this basis we
24 would agree. I think it's only in a matter of
25 fairness. We have been doing diligent discovery.

1 THE COURT: Well, that's fine. What
2 depositions do you want?

3 MS. LITSAS: Well, there is Carlos Fernandes.
4 Luis Carlvalho.

5 THE COURT: Can you spell that.

6 MS. LITSAS: Sure. It's C-A-R-L-V-A-L-H-O.

7 THE COURT: Go ahead.

8 MS. LITSAS: Brima Wurie. He's the one who's
9 incarcerated.

10 THE COURT: I'm allowing your motion. There's
11 no objection to it -- to take that?

12 MR. STOCKWELL-ALPERT: No.

13 MS. LITSAS: Diana Cepeda. Who are we
14 missing? We're continuing Domingas DePina, who is the
15 mother of the deceased. Her deposition had to be
16 suspended because of childcare issues. So we'd like to
17 continue with that. Um --

18 MR. OUELLETTE: The father.

19 MS. LITSAS: Carlos Cepeda.

20 MR. OUELLETTE: Ribaldo.

21 MS. LITSAS: I'm sorry. Gabriel Ribaldo, who
22 is the stepfather.

23 THE COURT: So it's not Carlos Cepeda?

24 MS. LITSAS: Well, actually what we've done
25 with Carlos Cepeda is we're asking him to produce some

1 documents and that's on Friday.

2 MR. OUELLETTE: His deposition was already
3 taken.

4 MS. LITSAS: His deposition was already taken.
5 He's just coming in for document production.

6 THE COURT: Okay.

7 MS. LITSAS: The other individual is Dana
8 Grant.

9 THE COURT: Go ahead. Who else?

10 MS. LITSAS: James Nicholas. And Travo
11 Carter. And Maria DaRosa, who has failed to appear now
12 on two occasions.

13 THE COURT: Who is after Nicholas?

14 MS. LITSAS: Maria DaRosa.

15 THE COURT: I thought there was somebody else
16 you mentioned.

17 MS. LITSAS: Travo Carter.

18 THE COURT: I have to get my rules. But
19 ordinarily you don't get this many depositions anyway.

20 MR. STOCKWELL-ALPERT: I think you get ten.

21 MS. LITSAS: And that was one of the issues we
22 were going to address today, if we could have your
23 permission to depose beyond the ten? Because these are
24 eyewitnesses and they're damages witnesses to --

25 THE COURT: Well, take a step back. Remind me

1 what happened. In other words, I'm refreshed somewhat
2 by your report, which is just what you're supposed to
3 do, except you have to single space your submissions
4 under the rules or they're supposed to get sent back,
5 which I have increasing appreciation for the importance
6 of.

7 MS. LITSAS: Oh, I'm sorry, your Honor.

8 THE COURT: But --

9 MR. STOCKWELL-ALPERT: This is a police
10 shooting case.

11 THE COURT: Right. There were some people in
12 the car --

13 MR. STOCKWELL-ALPERT: Four people in the car.

14 THE COURT: And the rest of these people were
15 witnesses?

16 MS. LITSAS: Yes, your Honor. There were five
17 people in the car. The driver, Brima Wurie, and the
18 front seat passenger was Carlos Fernandes. In the back
19 seat of the car was Maria DaRosa, the decedent, Eveline
20 Barros-Cepeda, and Luis Carlvalho. So those are
21 individuals we are seeking to depose. There were two
22 witnesses, Travo Carter and James Nicholas. Domingas
23 DePina is the mother of the deceased. Gabriel Ribaldo
24 is the --

25 THE COURT: And what's she going to testify

1 on, damages?

2 MS. LITSAS: According to Mr. Stockwell-
3 Alpert, yes. Gabriel Ribaldo is the deceased's
4 stepfather. He's also been listed in the other
5 disclosures as a witness on damages.

6 MR. STOCKWELL-ALPERT: I don't plan to call
7 him, by the way, Judge.

8 MS. LITSAS: And I believe Dana Grant is an
9 investigator hired by Carlos Cepeda, the husband of the
10 deceased, to conduct his own investigation regarding
11 this incident. I think I've covered everybody. So each
12 of these witnesses are certainly -- the majority are
13 percipient witnesses, there's a small segment that are
14 damages witnesses, and the remainder are also relevant
15 because of any investigation that was conducted by the
16 deceased's husband.

17 THE COURT: Now, who did you say you weren't
18 going to call?

19 MR. STOCKWELL-ALPERT: I'm not going to call
20 Gabriel, Domingas's husband.

21 MR. KEEFE: Ribaldo.

22 MR. STOCKWELL-ALPERT: He would not have
23 anything to add to what Domingas would put in.

24 THE COURT: Okay. So do you want to drop him
25 from the people you have to depose?

1 MR. OUELLETTE: He's the father of the
2 diseased. I think he's one of the more important
3 damages witnesses.

4 THE COURT: I think they're saying they're not
5 going to call him as a witness. If they tell me that
6 and then they try to call him, I'm going to say that
7 "You can't call him because you represented that you
8 weren't going to call him and as a result of that the
9 deposition wasn't taken," and it will be in the
10 transcript.

11 Do you still need or want to --

12 MS. LITSAS: Can we think about that, your
13 Honor?

14 THE COURT: No, because I'm going to -- look,
15 as soon as I let you out of my sight, if I don't give
16 you very specific orders, this is going to go off track
17 again. So I'm going to tell you who you can depose and
18 who you can --

19 MS. LITSAS: Okay. If he's not going to call
20 Gabriel Ribaldo, then we'll agree to not depose him.

21 THE COURT: Okay. We'll put that in the
22 order. It's been represented that Gabriel Ribaldo will
23 not be called by the plaintiff and therefore it's --
24 therefore, in reliance on that representation, the
25 defendants have agreed not to take Ribaldo's

1 deposition.

2 And how long do you think each of these
3 depositions is going to take?

4 MS. LITSAS: Well, I believe that some of them
5 may -- I've been informed that some of them may not last
6 very long because two of the witnesses, Luis Carlvalho
7 and Maria DaRosa, may, in fact, take their Fifth
8 Amendment. So I've scheduled these depositions
9 basically -- you know, I've scheduled two or three in
10 one day, so I anticipate two or three hours. And
11 Domingas DePina is the exception, of course, because she
12 is essentially the witness for the -- on the damages
13 case for the plaintiff.

14 THE COURT: All right. So you think you need
15 how many days of depositions, about three or four?

16 MS. LITSAS: Well, I'd say maybe five days of
17 depositions, just to be on the safe side, because James
18 Nicholas, for example, is a New Hampshire resident, so
19 we have to travel to New Hampshire to conduct his
20 deposition.

21 THE COURT: Okay. I'm just trying to figure
22 it out. And which of these people failed to appear in
23 response to --

24 MS. LITSAS: To a subpoena?

25 THE COURT: Yes.

1 MS. LITSAS: Travo Carter. Carlos Fernandes.
2 Luis Carlvalho. Maria DaRosa. And Brima Wurie,
3 although we know he failed to appear because he was
4 incarcerated.

5 MR. STOCKWELL-ALPERT: Your Honor --

6 THE COURT: Do you want to file a motion to
7 compel and tell me what dates you want them to appear?

8 MS. LITSAS: Sure, I can do that.

9 THE COURT: How quickly can you do that?

10 MS. LITSAS: I can do that by the end of the
11 week.

12 THE COURT: Okay, by 12:00 noon on Friday the
13 21st.

14 Now, is there going to be any opposition to that?

15 MR. STOCKWELL-ALPERT: Yes, there would be an
16 opposition to a couple of the depositions, but certainly
17 not all of them.

18 THE COURT: Why?

19 MR. STOCKWELL-ALPERT: First of all, Luis
20 Carlvalho and Maria DaRosa, I mean, they may well come
21 in and take the Fifth.

22 THE COURT: Well -- and in a civil case,
23 that's admissible.

24 MR. STOCKWELL-ALPERT: Right. Of course.
25 These people went to the grand jury. They testified at

1 the grand jury. They gave statements to the police way
2 back at the beginning. I don't see any relevance or any
3 purpose for a deposition.

4 THE COURT: Do you plan to call them?

5 MR. STOCKWELL-ALPERT: No, absolutely not.

6 THE COURT: But they may want to call them.
7 They can take their deposition. I mean, they just
8 failed to appear, they didn't --

9 MR. STOCKWELL-ALPERT: Right.

10 THE COURT: -- they didn't move to quash.

11 Do you all got your calendars? Why don't you just
12 put a week aside to do the depositions in January and
13 then the defendant will have had her -- the defendants
14 will have had their depositions and then we can talk
15 about plaintiffs.

16 MS. LITSAS: That sounds excellent, your
17 Honor.

18 (Pause.)

19 THE COURT: Mr. Keefe's looking at his
20 schedule. I know he would like to be there, and I'm not
21 saying he can't be there, but he doesn't represent a
22 plaintiff as far as I know, so I'm not going to sculpt
23 this around your schedule.

24 MR. KEEFE: No, no, we can make it, your
25 Honor.

1 THE COURT: All right. It's going to take you
2 a little -- okay. What week do you want?

3 MR. KEEFE: The week of the 28th.

4 THE COURT: Why put it off that far?

5 MR. STOCKWELL-ALPERT: I'm good with the week
6 of the 14th. I think it's January 14th?

7 THE COURT: Yes, the 14th.

8 MR. STOCKWELL-ALPERT: And whatever I have to
9 clear, I'll clear.

10 THE COURT: Okay.

11 MS. LITSAS: The week of the 14th works for
12 me, your Honor.

13 THE COURT: All right. Well, you give me a
14 motion and a proposed order, tell me when and where you
15 want each of them to appear, and I'll enter the order,
16 the week of the 14th.

17 MS. LITSAS: Excellent.

18 THE COURT: All right. And then who does the
19 plaintiff want to depose?

20 MR. STOCKWELL-ALPERT: The plaintiff is going
21 to depose Thomas Taylor, who is the person who shot, and
22 there's officer --

23 MS. LITSAS: Paillant.

24 MR. STOCKWELL-ALPERT: Okay. Paillant. Who
25 was the one who allegedly was hit by the vehicle. And

1 the two police officers -- and I have to go back and
2 look at the incident report, but the two police officers
3 who were following behind their vehicle at a slow rate
4 of speed.

5 THE COURT: And what are their names?

6 MR. STOCKWELL-ALPERT: I don't recollect right
7 now.

8 MR. OUELLETTE: Deb Flaherty and --

9 MS. LITSAS: Robert Conley.

10 MR. OUELLETTE: Right.

11 MR. STOCKWELL-ALPERT: Right. And we're going
12 to depose the ballistics, the person who conducted the
13 ballistics examination.

14 THE COURT: And who is that?

15 MR. STOCKWELL-ALPERT: I don't recollect. Do
16 we have that?

17 MS. LITSAS: Sergeant Duggan or Lieutenant
18 Harrington.

19 MR. STOCKWELL-ALPERT: Right.

20 THE COURT: Well, which one of them?

21 MR. STOCKWELL-ALPERT: Well, I'm going to have
22 both of them because one of them actually oversaw the
23 whole investigation, which was Sergeant Duggan, I
24 believe. So we're going to be deposing the one who
25 oversaw the whole weapons discharge investigation and

1 then the one who did the ballistics examination of how
2 the bullets hit the car. And then we have a couple of
3 basically document depositions. Apparently the injured
4 officer filed a claim against the owner of the vehicle
5 for personal injury and we are going to get that
6 insurance file, okay, to find out what exactly was the
7 injury.

8 THE COURT: What's the insurance company?

9 MR. STOCKWELL-ALPERT: Do you recall the
10 insurance company?

11 MR. DeMIRANDA: I don't recollect right now.

12 MR. STOCKWELL-ALPERT: I mean, Manny Pires
13 basically has that information.

14 MS. LITSAS: Your Honor, we would argue how
15 that information is not relevant, the fact that he
16 obtained Worker's Compensation.

17 THE COURT: No, but if he made statements to
18 the insurance company, it would be relevant. They might
19 be inconsistent with the deposition testimony.

20 MR. STOCKWELL-ALPERT: And, in fact, he filed
21 a Worker's Comp. claim as well as a personal injury
22 claim, and so we're really trying to get both of those
23 files.

24 THE COURT: We're talking here about
25 discovery. Whether he gets something admissible is a

1 different question.

2 MR. STOCKWELL-ALPERT: Right. And then
3 there's also the hospital records because apparently he
4 went to the hospital. So we're going to get the
5 hospital records. So those are the three document
6 depositions.

7 THE COURT: Well, the insurance company, the
8 hospital, and what's the third?

9 MR. STOCKWELL-ALPERT: Worker's Comp. The
10 insurance company is auto insurance.

11 THE COURT: All right.

12 MR. STOCKWELL-ALPERT: And I believe that
13 would sum it up.

14 THE COURT: All right. So that's 1, 2, 3, 4,
15 5, 6, 7, 8, 9, 10. But since you haven't done anything
16 in a year and a half, I really wonder whether you're
17 going to do anything in the next three months.

18 MR. STOCKWELL-ALPERT: No, everybody is on
19 board now.

20 THE COURT: All right. So when do you want to
21 take your depositions?

22 MR. STOCKWELL-ALPERT: I can take my
23 depositions two weeks after their depositions or
24 sometime in February. I'll clear my docket, okay, to do
25 this. I'm serious about moving this case.

1 MR. KEEFE: The week of the 28th would be two
2 weeks afterwards.

3 THE COURT: The week of the 28th, does that
4 work?

5 MR. KEEFE: Yeah.

6 MS. LITSAS: That does work for me, your
7 Honor. The only concern I have is with some of the
8 officers and their schedules. It's very difficult to
9 try to coordinate that. So we would just like some
10 flexibility with that.

11 THE COURT: Well, you've got five weeks'
12 notice. They can arrange their schedules. No, they
13 have to do this. They have to do this.

14 MS. LITSAS: Okay.

15 THE COURT: So let's just do it.

16 MS. LITSAS: Okay.

17 THE COURT: I'm not going to let you come back
18 and say --

19 MS. LITSAS: Oh, I understand.

20 THE COURT: All right. Well, the defendant
21 can take up to ten depositions of the people or
22 organizations that have been named beginning January
23 28th. And is the week sufficient to complete them all?

24 MR. KEEFE: I think we'll wrap them up in a
25 couple of days, your Honor.

1 THE COURT: Right. So they're to be completed
2 by January 31st.

3 MR. STOCKWELL-ALPERT: That's only four days?

4 MS. LITSAS: You meant the plaintiffs.

5 THE COURT: I meant the plaintiffs. Did I say
6 the defendants?

7 MS. LITSAS: Yes.

8 THE COURT: I'm sorry. All right. The
9 defendants' depositions of the individuals named are
10 going to be taken from January 14th to January 18th.
11 the plaintiffs' depositions, limited to the people
12 named, are going to be taken January 28th to 31st.

13 MR. STOCKWELL-ALPERT: That's four days. Can
14 we have five?

15 THE COURT: Oh, yes, it is. It is. You can
16 have until February 1st.

17 MR. STOCKWELL-ALPERT: You know, just most
18 respectfully, Thomas Taylor is like the key witness and
19 we may want more --

20 THE COURT: I gave it to you. Make sure you
21 leave enough time for him.

22 All right. Then you haven't designated experts.
23 And the plaintiff has to go first and provide the
24 information required by the pertinent part of Rule 26.
25 Are you going to designate an expert?

1 MR. STOCKWELL-ALPERT: Yes, we have started
2 discussions with two different experts. We're going to
3 have a vocational and economic expert basically to
4 testify about what she's earned, this and that, what her
5 skills were and so on for her life, and that would be
6 Dana Hewins, H-E-W-I-N-S. I haven't spoken to him yet,
7 so it's not cast in concrete.

8 THE COURT: And who is the other expert?

9 MR. STOCKWELL-ALPERT: The other would be
10 basically the one who comes in and testifies about, you
11 know, complaints against the City and about customs and
12 policy --

13 THE COURT: All right. But if you're going to
14 complete discovery in three months, you're going to have
15 to -- because we've got to leave some time for possible
16 expert depositions, so what about --

17 MR. STOCKWELL-ALPERT: I'm getting to --

18 THE COURT: Let me finish. Let me finish.

19 MR. STOCKWELL-ALPERT: Yes.

20 THE COURT: You're going to make Mr. Keefe
21 think that he can get away with this, too. He's
22 wondering when I got so patient. I can tell what's
23 going through his head.

24 (Laughter.)

25 THE COURT: You're going to have to -- we're

1 going to issue an order, but it's Rule 26.

2 The plaintiff shall, by February 8, designate
3 experts and disclose the information required by Federal
4 Rule of Civil Procedure 26(a)(2) concerning each expert
5 and then the defendant will need to do the same by March
6 15th -- March 14th. And I'll actually give you a little
7 more time than you asked me for, because if you want to
8 take a deposition of any expert, the deposition shall be
9 taken by April 11th. And then again, you're going to,
10 by April 18, confer and file a report, each of you, both
11 sides, file a report as to the prospects for settlement
12 and whether either party feels there's a proper basis
13 for filing a motion for summary judgment.

14 What's the date I just gave you for that?

15 THE CLERK: April 18th.

16 THE COURT: And I'm going to see you at 4:00
17 on April 24th to talk about settlement and summary
18 judgment.

19 Now, you might -- well, the defendants have
20 already done this, so we can't really talk about summary
21 judgment because we don't know what the evidence is
22 since discovery is very far from complete, but, you
23 know, they cite a bunch of cases, some of them for
24 familiar propositions, so --

25 Have you had any discussions about whether this

1 case can be settled?

2 MR. STOCKWELL-ALPERT: It was scheduled for
3 mediation and then the City decided that they didn't
4 want to go through with it and that was the last
5 discussion of mediation.

6 THE COURT: Well, that's fine.

7 MS. LITSAS: The case law and the evidence,
8 your Honor, we're really not in a position to make that
9 --

10 THE COURT: No, that's reasonable. The idea
11 -- the reason I tell you to discuss settlement at the
12 end of discovery is that you know what the evidence is.
13 But the next time you really need to do this. You're
14 going to be spending some time together so, you know,
15 see what you can do. Somebody is dead. Maybe it's just
16 unfortunate, but on the other hand -- you know, just
17 see.

18 But then if I authorize motions for summary
19 judgment -- and I'll change this, but if there are, you
20 know, just disputed facts, then when do I have them
21 coming in? April 24th?

22 THE CLERK: Yeah.

23 THE COURT: We'll have a pretrial conference
24 May 15th and we'll go to trial on May 27th.

25 MR. STOCKWELL-ALPERT: May I ask one thing?

1 THE COURT: Sure.

2 MR. STOCKWELL-ALPERT: Could we roll back that
3 4:00 to 3:00? I have significant transportation issues.

4 THE COURT: Okay. What day?

5 THE CLERK: The 24th.

6 THE COURT: Okay. Okay.

7 MR. STOCKWELL-ALPERT: I would really
8 appreciate that.

9 THE COURT: Okay. All right. Mr. O'Leary
10 will have to remind me to put that at 3:00.

11 MS. LITSAS: Your Honor, I'm a little confused
12 on the -- if you authorize summary judgment motions --

13 THE COURT: Then I'm going to change the
14 pretrial conference and the trial dates.

15 MS. LITSAS: Okay. So we're not preparing
16 summary judgment motions and trial at the same time?

17 THE COURT: No. No. But if it turns out that
18 you look at it and you see there are disputed material
19 facts and that this case is going to have to be tried,
20 then that's the schedule it will be tried on.

21 MS. LITSAS: Okay.

22 THE COURT: If you come and tell me again
23 "We'd like to move for summary judgment," and do just
24 what you did this time, you know, give me a feel for it
25 so I see there's a colorable basis, then I'll say,

1 "Okay, you can file for summary judgment. We're not
2 going to trial at the end of May. Here's the schedule
3 for summary judgment."

4 MS. LITSAS: Okay. And I'll make sure I'll
5 single space it this time.

6 THE COURT: Okay.

7 MR. McCAULL: Your Honor, any chance we can go
8 to the first week of June for trial?

9 THE COURT: Not as of now.

10 MS. LITSAS: The other outstanding motions,
11 your Honor --

12 THE COURT: Oh, yeah, the CORI motion.

13 MS. LITSAS: The CORI motion, yes.

14 THE COURT: Yeah, there's no objection to
15 that. That's allowed, too. With regard to people who
16 are going to be witnesses, it bears on their
17 credibility. I think you also asked for the decedent's
18 CORI and I assume that's relevant to damages
19 potentially, right?

20 MS. LITSAS: Yes.

21 THE COURT: Okay. We'll enter an order. You
22 can have all of that.

23 MS. LITSAS: I have a proposed order.

24 THE COURT: Oh, you have a proposed order?
25 Okay.

1 (Hands over.)

2 THE COURT: Is it in there?

3 MS. LITSAS: Yup, right here, your Honor.
4 Sorry. It's not stapled.

5 THE COURT: That's all right.

6 (Signs.)

7 THE COURT: Let's see. You also -- just so
8 you can get going, because your time is short, you have
9 the motion to take the deposition and that's allowed.
10 (Signs.)

11 All right. Are those all the motions?

12 MS. LITSAS: Yes, your Honor. Just two other
13 points. We have yet to receive written discovery from
14 the plaintiff, their answers to interrogatories and
15 document production. If --

16 THE COURT: You need it for the --

17 MS. LITSAS: If there's information that is
18 new or --

19 THE COURT: You need it for the depositions?

20 MS. LITSAS: That's right.

21 MR. STOCKWELL-ALPERT: Two weeks, they'll have
22 it.

23 THE COURT: Yes. If they don't have it, I may
24 dismiss the case.

25 MR. STOCKWELL-ALPERT: Three weeks.

1 THE COURT: No, not three weeks. They've got
2 a deposition January 14th. They want to read it.

3 MR. STOCKWELL-ALPERT: Right.

4 MS. LITSAS: And, your Honor, we would just
5 reserve the right to call in to -- if we need to add
6 other witnesses to our deposition list, I'll just file a
7 motion.

8 THE COURT: You'll have to file a motion. You
9 have a right to file a motion. You don't have a right
10 to add people. But that's fine.

11 You're to -- we'll say by January 3rd, I'm
12 ordering -- what do you have, interrogatories?

13 MS. LITSAS: Interrogatories and requests for
14 production of documents.

15 THE COURT: All right. The plaintiff is to
16 respond to the pending interrogatories and pending
17 request for production of documents by January 3, 2008
18 and it needs to be everything.

19 MS. LITSAS: The underlying probate case
20 involving the decedent's estate, apparently we've just
21 learned that the material is impounded in the probate
22 court, so we do not have access to it. What are your
23 recommendations as far as accessing that material,
24 should we seek an order from you or --

25 THE COURT: Well, let me ask you this.

1 MS. LITSAS: He's refused to provide that
2 information to us.

3 MR. STOCKWELL-ALPERT: I didn't refuse. What
4 I said was that I'm not going to have the executor or
5 the administrator of the estate go to court and try to
6 unimpound these documents without them coming in and
7 making some sort of showing that the probate court
8 documents, which have been impounded for particular
9 reasons, are relevant to anything.

10 THE COURT: What's in the probate court
11 documents, potentially?

12 MS. LITSAS: Apparently there's information
13 regarding some of the witnesses that may be testifying,
14 Mr. Carlos Cepeda. There's information that has been
15 discussed because there was a child custody dispute or a
16 guardianship dispute over the grandmother of the -- or
17 the mother of the decedent, who is the grandmother, and
18 the father of the child. Apparently --

19 THE COURT: What's the relevance?

20 MS. LITSAS: The relevance is because it goes
21 to damages and Domingas DePina is going to be a witness
22 who is going to testify at the trial on behalf of the
23 decedent. She's going to talk about her daughter.
24 She's going to talk about her grandchild. And all of
25 that information has been --

1 THE COURT: Well, who provided the information
2 to the probate court?

3 MS. LITSAS: Domingas DePina.

4 THE COURT: Fine. You can get it from
5 Domingas DePina. Why do you have to get it from the
6 court?

7 MS. LITSAS: Because the court --

8 THE COURT: The fact that it's impounded in
9 the court record doesn't mean that Mr. DePina can't give
10 it to you. Who represents Mr. DePina?

11 MS. LITSAS: No one. I just learned the other
12 day at her deposition that Mr. Stockwell-Alpert is not
13 representing her.

14 MR. STOCKWELL-ALPERT: I never have
15 represented her.

16 THE COURT: Oh, DePina is a female.

17 MR. STOCKWELL-ALPERT: Right.

18 THE COURT: Well, my point is as follows. I
19 think if you want to discover something that's in the
20 probate records -- and I don't know who the parties of
21 the probate dispute, you know, the probate matter, are,
22 you'll have to go to the probate court to unseal them.

23 MS. LITSAS: Okay.

24 THE COURT: But the fact that something is
25 sealed at the probate court doesn't mean that you can't

1 obtain the same information from whoever gave it to the
2 probate court.

3 MS. LITSAS: I understand that, your Honor.

4 THE COURT: So, you know, in connection with
5 the subpoena to Mr. -- Miss DePina for the deposition,
6 ask for copies of everything that DePina provided to the
7 probate court. That's one way to get it. And then I
8 don't know who else provided information to the probate
9 court.

10 MS. LITSAS: Certainly any testimony that --

11 THE COURT: Or you can go into probate court
12 and move to have it unsealed subject to some protective
13 order. But I don't, A, have a motion before me with a
14 memorandum. I have questions about my authority to
15 essentially unseal, for limited purposes, records in
16 another court.

17 MS. LITSAS: I understand, your Honor.

18 THE COURT: And if I have the authority, I
19 have questions about the propriety of doing it.

20 MS. LITSAS: Okay.

21 THE COURT: Now --

22 MR. STOCKWELL-ALPERT: I have an issue about
23 that, too, as well.

24 THE COURT: And what is that?

25 MR. STOCKWELL-ALPERT: And that is that Miss

1 DePina was the guardian of the child after a long and
2 protracted battle and she's not the administrator, and
3 -- she had an attorney representing her and Carlos
4 Cepeda had these attorneys representing him. It would
5 seem to me that if, in fact, anything was directed to
6 anybody, it would have to be directed to Domingas
7 DePina's attorney who represented her in the probate
8 court who can make the decision, because Domingas DePina
9 gave nothing to anybody. She was represented by a
10 lawyer who filed all the papers and the relevant
11 documents and things like that in court. So Domingas
12 DePina has nothing to give with respect to anything.
13 And I would suggest that you have to go to the attorney
14 for Domingas DePina.

15 THE COURT: You mean take the attorney's
16 deposition?

17 MR. STOCKWELL-ALPERT: No, go to the attorney
18 and see if the attorney would go along with unsealing
19 the record or anything. He's got the standing to come
20 in and object to it.

21 THE COURT: No, I think that he's the
22 witness's agent and anything that you give to an
23 attorney, that it is in the custody and control of the
24 client.

25 MR. STOCKWELL-ALPERT: So if you're talking

1 about specifically documents and things that she
2 provided him with, that's one thing. If you're trying
3 to get at anything else, there might be work product or
4 anything else in the probate court, that's another
5 matter. And she can certainly inquire of Domingas as to
6 what if any documents did she actually give.

7 THE COURT: She wants to get the documents
8 before the deposition, I assume.

9 MS. LITSAS: And certainly any testimony that
10 was provided in the proceeding that is directly relevant
11 at least for -- well, not just for damages purposes, but
12 also for impeachment purposes.

13 THE COURT: Well, you may need to go to the
14 court for that. I don't know whether the transcripts
15 have been made.

16 MS. LITSAS: Yes. Thank you.

17 THE COURT: But anything in an attorney's
18 possession on behalf of a client is within the client's
19 custody and control. It's not immunized from production
20 because the attorney's holding it. And if there's some
21 work product privilege, then that's something else.

22 MR. STOCKWELL-ALPERT: Well, I guess, your
23 Honor -- and just to not belabor this, but quickly, that
24 if she didn't give him any documents to file and the
25 administrator of the estate has no documents prepared by

1 her --

2 THE COURT: You want to listen to this.

3 MS. LITSAS: Excuse me.

4 THE COURT: Go ahead.

5 MR. STOCKWELL-ALPERT: If she hasn't given any
6 documents to her lawyer and the lawyer simply went ahead
7 and prepared an administration of the estate and an
8 administrator was appointed, then there's no connection
9 between her and anything that you're trying to
10 discover. And it seems that the issue can be simply
11 resolved by making an inquiry as to what if any
12 documents that she provided to her lawyer to the probate
13 court, because everything else is sealed.

14 THE COURT: I don't have a motion in front of
15 me, but I'm telling you that the fact that something's
16 under seal in court doesn't mean it's not discoverable.
17 Somebody might move to quash the subpoena and say, "No,
18 there's a proper basis. It's attorney-client privilege,
19 it's work product." But the fact that it's sealed in
20 court doesn't mean that it can't be -- doesn't
21 automatically mean it can't be produced by the client or
22 her agent.

23 So if you have to come back to me on any of this,
24 that's the understanding I'm going to start with and
25 you'll have to give me some authority for some different

1 proposition.

2 All right. Now, the past cannot be prologue. I
3 very rarely conduct a scheduling conference with the
4 court reporter present, but he's present. He's going to
5 put this on my laptop so that I can pull up the draft
6 even if you don't order it. And, you know, to the
7 extent that the plaintiff has any influence over the
8 people that the defendants want to depose, you should
9 exert that influence to cause them to come. Because if
10 they don't give their depositions, the plaintiff is
11 certainly not going to be permitted to call them at
12 trial or at least they're going to say there's a
13 prejudice, they shouldn't be allowed to testify at
14 trial.

15 Similarly, you know, I know these are police
16 officers, but now they've got six weeks' notice. You
17 can go out and sit in my conference room, decide what
18 dates you prefer for each of the police officers, and
19 put the time aside. But they have to do it.

20 MS. LITSAS: Absolutely, your Honor.
21 Absolutely.

22 MR. STOCKWELL-ALPERT: Judge, we have not done
23 anything to interfere with them trying to get any
24 witness -- we're not calling any of these people and
25 some of them have Fifth Amendment issues. And I don't

1 think we have any obligation --

2 THE COURT: No, no, that's fine. I was
3 thinking about people you might be calling. No, you
4 don't have an obligation to cause other witnesses to
5 appear. On the other hand, I'm going to issue an order
6 if they haven't -- just for the people who have failed
7 to obey notices of deposition, so you'll have to
8 describe that to me, to appear. If they fail to appear
9 and there's a motion to hold them in contempt, I'll have
10 to send the marshals out to get them.

11 MR. STOCKWELL-ALPERT: So be it.

12 THE COURT: They have other things to do.

13 MR. STOCKWELL-ALPERT: Well, I don't want you
14 to have to do that either, but --

15 THE COURT: No, I'm not saying I do, I'm
16 saying the marshals have other things to do. No, I can
17 send them out. It's not a great effort on my part. And
18 then the marshals will take them and they'll lock them
19 up until they give their deposition. I'll hold them in
20 civil contempt. But, you know, unless they like being
21 locked up, they should come for their deposition.

22 MS. LITSAS: Thank you, your Honor. We're
23 trying to be as -- we understand that a couple of these
24 witnesses had family emergencies or some type of
25 situations, but other witnesses have just failed to

1 appear. That's why we held off on that motion to compel
2 to give people in certain circumstances --

3 THE COURT: Well, I'm afraid their lives are
4 not going to get any less chaotic, so this is the time.
5 And, you know, it's a serious thing, you know, because
6 somebody's killed and it's a serious thing because there
7 are serious allegations against the defendants, and so
8 it's got to be taken seriously and done properly.

9 MS. LITSAS: I agree, your Honor.

10 THE COURT: All right. Now you've got a
11 schedule. More?

12 MS. LITSAS: I just wanted to put you on
13 notice of the -- of Shenia Dancy-Stewart, she's the
14 administrator of the estate. Mr. Stockwell-Alpert did
15 give me the opportunity to speak with her informally. I
16 haven't yet had the opportunity. But if for some reason
17 I don't have that -- if she's not cooperative or refuses
18 to talk with me, I would like the opportunity to reserve
19 my right to depose her, since she is the administrator.

20 THE COURT: Well, at this point you don't have
21 the right, you have to ask me, because I asked you to
22 tell me everybody you've been trying to depose since
23 August of 2006 and you told me. So the people you told
24 me, you have a right to depose, that week of January
25 14th, but anybody else you're going to have to persuade

1 me should be added. Okay?

2 MS. LITSAS: Will do. Thank you, your Honor.

3 MR. STOCKWELL-ALPERT: Thank you, Judge.

4 MR. McCAULL: Thank you, very much.

5 MS. LITSAS: Thank you for your time.

6 (Ends, 2:00 p.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Chief Judge Mark L. Wolf, on December 19, 2007,
to the best of my skill and ability.

/s/ Richard H. Romanow

RICHARD H. ROMANOW